REMARKS/ARGUMENTS

Applicants have received the Final Office Action dated December 7, 2007, in which the Examiner: 1) rejected claim 1 on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claim 1 of McIntyre et al. (U.S. Pat. No. 6,272,113, hereinafter "McIntyre") in view of Banga et al. (U.S. Pat. No. 6,895,429, hereinafter "Banga"); and 2) rejected claims 1-29 under 35 U.S.C. § 103(a) as being allegedly obvious under McIntyre in view of Banga. With this Response, Applicants amend claims 1, 14, 21, 23 and 28-29. Applicants also cancel claim 26. Based on the amendments and arguments presented herein, Applicants respectfully submit that this application is in condition for allowance.

I.   REJECTIONS UNDER 35 U.S.C. § 103(a)

The Examiner rejected claims 1-29 under 35 U.S.C. § 103(a) as allegedly obvious under McIntyre in view of Banga. As amended, claim 1 requires "the driver system causes all of the plurality of network ports not currently operated as part of a team to transmit test packets to all other ports to determine whether said non-teamed ports can be combined in a team." The combination of McIntyre and Banga fails to teach or suggest this limitation. Instead, McIntyre teaches determining whether NICs that are **already** in a team may continue to remain in that team. Col. 8, ll. 59-65. Banga fails to satisfy the deficiencies of McIntyre. Thus, claim 1 is patentable over the combination of McIntyre and Banga.

In the Final Office Action, p. 15 ("regarding claim 26"), the Examiner asserts that McIntyre, col. 8, ll. 62-65 teach that "the intermediate driver determines whether each ports are connected to the other. If they are connected, then they are coupled to the same network; therefore, they can be combined to form a team." Applicants appreciate and understand the Examiner's argument that each of McIntyre's acts of repeatedly checking viability of network connections qualifies as "determining" which network ports can be teamed

together.[1] However, "determining" – as in amended claim 1 – now has to do teaming ports that are **not currently** teamed together. This requirement is in contrast to the teaching of McIntyre, which is directed to ports that are already teamed together. Banga fails to satisfy the deficiencies of McIntyre. Thus, independent claim 1 and dependent claims 2-13 are patentable over the combination of McIntyre and Banga.

Independent claim 14 requires "wherein said controller subsystem causes all of said NICs not currently operated as part of a team to transmit test packets to all other ports to determine whether said non-teamed ports can be operated in a team." As explained above, the combination of McIntyre and Banga fails to teach or suggest such a limitation. Thus, independent claim 14 and dependent claims 15-20 are patentable over the combination of McIntyre and Banga.

Independent claim 21 requires "wherein said means for determining causes all of said network ports not currently operated as part of a team to transmit test packets to all other network ports to determine whether said non-teamed network ports can be operated in a team." As explained above, the combination of McIntyre and Banga fails to teach or suggest such a limitation. Thus, independent claim 21 and dependent claim 22 are patentable over the combination of McIntyre and Banga.

Independent claim 23 requires "wherein said logic causes all of said ports not currently operated as part of a team to transmit test packets to all other ports to determine whether said non-teamed ports can be operated in a team." As explained above, the combination of McIntyre and Banga fails to teach or suggest such a limitation. Thus, independent claim 23 and dependent claim 24-25 and 27 are patentable over the combination of McIntyre and Banga.

Independent claim 28 requires "determining which of said non-teamed ports may be operated in a team and which of said non-teamed ports, if any, are ineligible to be operated in said team" and "grouping into a team the non-teamed

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[1] Applicants do not admit or deny the validity of this argument.

ports that are eligible to be operated in said team, each of said eligible non-teamed ports is associated with a different network interface card (NIC), said NICs having a common team network address to be used by external devices." As explained above, the combination of McIntyre and Banga fails to teach or suggest such limitations. Thus, independent claim 28 and dependent claim 29 are patentable over the combination of McIntyre and Banga.

II.   NONSTATUTORY OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

The Examiner rejected claim 1 on the ground of nonstatutory obviousness-type double patenting as obvious under claim 1 of McIntyre in view of Banga. Applicants traverse this rejection. Applicants' claim 1 requires "the driver system causes all of the plurality of network ports not currently operated as part of a team to transmit test packets to all other ports to determine whether said non-teamed ports can be operated in a team." As Applicants explained above, the combination of McIntyre and Banga fails to claim or even disclose such a limitation. For at least this reason, a nonstatutory obviousness-type double patenting rejection is improper and should be removed.

III.   CONCLUSION

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the cited art which have yet to be raised, but which may be raised in the future.

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of

time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

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